

REMARKS

With the foregoing amendment, Claims 1, 2, 4 and 6-29 are pending in the application. Claims 3 and 5 were previously canceled and Claims 14-17 have been withdrawn. New Claim 29 is added. Claims 1, 18, 20, 21, and 23 are amended.

The Examiner rejected Claims 1, 2, 4, 6, 9, and 18-28 under 35 U.S.C. § 103(a) as being unpatentable over Jarvis (U.S. Patent No. 2,859,505). The Examiner rejected Claims 1, 2, 4, 6-8, 18-22, and 24-27 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. (U.S. Patent No. 5,579,549) or Nunez et al. (U.S. Patent No. 5,579,549) in view of Farley '849 (U.S. Patent No. 5,077,849) or Farley '179 (U.S. Patent No. 6,003,179). The Examiner rejected Claims 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of Farley '849 or Farley '179 in further view of Klancik (4,092,749). The Examiner further rejected Claims 9 and 12-13 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of Farley '849 or Farley '179 in further view of Talbert et al. (4,086,675) or Bonaddio et al. (5,537,699) or Fultz et al. (3,516,901). The Applicant respectfully disagrees and traverses the Examiner's rejections.

In additional to the previous descriptions of the present invention (See previous Office Action Responses), the Applicant notes that the materials within the center region may include any material or materials such as "open coils, pocket coils, a monolithic or composite foam (such as viscoelastic foam), fluids or gasses in one or more bladders, and so forth, or any combination of these" (See Application, Para. 0022). The material may also include a quilting layer, upholstery layer, springs, reinforcing materials, padding, batting, or absorbent materials. Furthermore, the firmness may be adjusted "by the use of additional springs, stiffer springs, springs that are smaller and more densely packed, firmer materials (for, e.g., foam or air bladders), and so forth" (See Application, Para. 0022).

In addition to the previous descriptions of Jarvis (See previous Office Action Responses), Applicants point out that Jarvis only discloses a single air bladder or chamber 22 in the center region. (See Jarvis, Figs. 1 and 2). The air bladder or chamber 22 is “preferably made of a plastic material” and “may be individually inflated” (See Jarvis, col. 2, lines 63-63 and col. 2, lines 22-23).

The Examiner rejected Claims 1, 2, 4, 6, 9, and 18-28 under 35 U.S.C. § 103(a) as being unpatentable over Jarvis. The Applicant respectfully disagrees. Now amended Claim 1 includes “one or more materials other than a single air bladder” (See amended Claim 1). Jarvis neither teaches nor suggests using any materials other than a single plastic air bladder or chamber 22 in the center region (See Jarvis, Figs. 1 and 2). Jarvis, alone or in combination with one or ordinary skill in the art, does not teach or suggest the invention, as claimed in now amended base Claim 1. Furthermore, one of ordinary skill would not have considered modifying Jarvis to include “materials other than a single air bladder” because Jarvis teaches away from using any other materials to ensure that the mattress “is relatively light as compared with the cotton previously employed” (See Jarvis, col. 2, lines 67-69).

Thus, the Examiner has failed to make a prima facie case of obviousness because Jarvis in combination with one of ordinary skill does not teach or suggest all of the elements of amended base Claim 1. Also, there would be no motivation or suggestion to modify Jarvis to include materials other than a single air bladder to ensure that the mattress was as light as possible “and thus a good deal of expense in shipping caskets may be avoided” (See Jarvis, col. 2, lines 70-71). Because there is no prima facie case of obviousness with respect to amended base Claim 1, the §103 rejection of base Claim 1 should be withdrawn with respect to Jarvis.

Because now amended base Claims 18 and 21 include “one or more materials other than a single air bladder,” the §103 rejection of these claims should be withdrawn with respect to Jarvis for the above reasons.

Because base Claim 20 includes “a compensation means other than adjusting the inflation of a single air bladder,” the §103 rejection of base Claim 20 should be withdrawn with respect to Jarvis for the above reasons.

Because base Claim 23 includes “one or more adjustable members other than a single air bladder,” the §103 rejection of base Claim 23 should be withdrawn with respect to Jarvis for the above reasons.

Because Claims 2, 4, 6-13, 19, 22, and 24-28 depend from, and are limited by allowable base claims, the §103 rejection of these claims should be withdrawn. No new matter is added by new claim 29 which depends from base Claim 1 and should be allowable.

Jarvis does not teach or suggest “one or more materials that mitigate the emergence of a center ridge” in “a upper surface of the mattress” as claimed in claim 24. Also, there would be no motivation to modify Jarvis to include materials in a upper surface to minimize the “expense in shipping caskets” (See Jarvis, col. 2, lines 70-71). For this additional reason, there is no prima facie case of obviousness with respect to Jarvis for Claim 24 and, therefore, the § 103 rejection of Claim 24 should be withdrawn.

Jarvis does not teach or suggest “one or more materials having a firmness reduced or increased relative to other regions of the mattress” in “a upper surface of the mattress” as claimed in claim 25. Also, there would be no motivation to modify Jarvis to include materials in a upper surface to minimize the “expense in shipping caskets” (See Jarvis, col. 2, lines 70-71). For this additional reason, there is no prima facie case of obviousness with respect to Jarvis for Claim 25 and, therefore, the § 103 rejection of Claim 25 should be withdrawn.

Jarvis does not teach or suggest including “the compensation means of the center region ...in a upper surface of the mattress” as claimed in claim 26. Also, there would be no motivation to modify Jarvis to include a compensation means in a upper surface to minimize the “expense in shipping caskets” (See Jarvis, col. 2, lines 70-71). For this additional reason, there is no prima facie case of obviousness with respect to Jarvis for Claim 26 and, therefore, the § 103 rejection of Claim 26 should be withdrawn.

Jarvis does not teach or suggest including “one or more materials...in a upper surface of the mattress” as claimed in claim 27. Also, there would be no motivation to modify Jarvis to include one or more materials in a upper surface to minimize the “expense in shipping caskets” (See Jarvis, col. 2, lines 70-71). For this additional reason, there is no prima facie case of obviousness with respect to Jarvis for Claim 27 and, therefore, the § 103 rejection of Claim 27 should be withdrawn.

Jarvis does not teach or suggest including “one or more adjustable members...in a upper surface of the mattress” as claimed in claim 28. Also, there would be no motivation to modify Jarvis to include one or more adjustable members in a upper surface to minimize the “expense in shipping caskets” (See Jarvis, col. 2, lines 70-71). For this additional reason, there is no prima facie case of obviousness with respect to Jarvis for Claim 28 and, therefore, the § 103 rejection of Claim 28 should be withdrawn.

The Examiner rejected Claims 1, 2, 4, 6-8, 18-22, and 24-27 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179. The Applicant respectfully disagrees.

The Examiner's interpretation or view clearly contradicts the plain meaning and designation of the head portion and foot portion as described in Selman et al., Nunez et al., Farley '849, and Farley '179.

Selman et al. explicitly refer to "the head portion 104 and foot portion 106" of Fig. 1. It was well understood at the time in the art that "the head portion 104" corresponds to the portion where a person's head should be located and that "the foot portion 106 is the portion where a person's feet should be located. Selman et al. explicitly state "it would be desirable to provide selected zones...of relatively increased firmness" that include "the transverse head, center and foot. (See Selman et al., col. 1, lines 27-28).

Nunez et al., in Fig. 1, show the orientation of a person with respect to the mattress 10 which indicates that the mattress regions extend from side to side and not from head to foot. Nunez et al. state "the first zone 41 provides support to the head and neck area. The second zone 42 provides comfort to the shoulder area" and so on. (See Nunez et al., col. 3, line 62 to col. 4, line 10).

Farley '849, in Figs 24 and 25, shows the "head support area 201, the middle back area 205 and the leg and feet support area 209" as extending across the mattress from side to side as opposed to from the head end to the foot end.

Farley '179, in Fig. 1, shows an inclined mattress where "the head is elevated relative to the feet" (See Farley '179, col. 4, lines 49-51). Further, Farley '179, in Fig. 2, show "shoulder, foot, and tail support regions 22, 24, 26" extending across the mattress from side to side as opposed to from head end to foot end (See Farley '179, col. 5, lines 33-34).

The Examiner asserts "that there is no structure precluding the examiners interpretation of what is the head portion and the foot portion" of the mattress (See Office Action, Section 6). However, the foregoing descriptions in Selman et al., Nunez et al., Farley '849, and Farley '179

clearly describe regional structures in the mattresses that are arranged to provide different support firmness to different portions of the human body. To provide such support to different portions of a human body lying on these mattresses, the regions must extend from side to side as opposed to from the head end to foot end. Therefore, there are numerous structures throughout each of the cited references that preclude the Examiner's interpretation of what is the head portion and the foot portion.

The Examiner's alleged interpretation or viewing of the prior art is more properly characterized as a modification of Selman et al. or Nunez et al. in view of Farley '849 or Farley '179 to realize the invention as claimed in Claim 1. According to MPEP § 2143.01, the proposed modification cannot render the prior art unsatisfactory for its intended purpose. By viewing or interpreting the regions of the mattresses in any one of Selman et al., Nunez et al., Farley '849, and Farley '179 to extend from the "head end to foot end" as claimed in Claim 1, any one or combination of Selman et al., Nunez et al., Farley '849, and Farley '179 are rendered unsatisfactory for their intended purposes. Selman et al., Nunez et al., Farley '849, and Farley '179 are rendered unsatisfactory for their intended purposes because none of the reference, upon modification, are able to provide different support to different portion of a human body as originally intended in each reference.

According to *In Re Gordon*, the conclusion of prima facie obviousness was error because it was based on a modification of the prior art apparatus created by viewing it from one direction and the claimed apparatus from another direction (See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). In this case, the Examiner is viewing, i.e., interpreting, the prior art, e.g., Selman et al., Nunez et al., Farley '849, and Farley '179, from one direction, i.e., side to side, and the claimed apparatus, e.g., Claim 1, from another direction, i.e., head end to foot end. The Examiner admits "if one were to lay transversely on a bed, then the portion of the bed where the

user head lies would be considered the head portion and the portion of the bed where the feet lies would be the foot portion” (See Office Action, Section 6). Thus, the Examiner admits that his conclusion of prima facie obviousness is based on a modification of the prior art mattress in Selman et al., Nunez et al., Farley ‘849, or Farley ‘179 created by viewing or interpreting the prior art mattresses from one direction and the claimed mattress from another direction or orientation. Furthermore, by such modification, each mattress disclosed in Selman et al., Nunez et al., Farley ‘849, and Farley ‘179 “would be rendered inoperable for its intended purpose” (See *In re Gorden*, 733 F.2d 900 at 902, 221 USPQ 1125 (Fed. Cir. 1984)). Because the modification of the mattresses disclosed in Selman et al., Nunez et al., Farley ‘849, and Farley ‘179 would render the mattresses inoperable for their intended purpose, these references cannot be modified or combined to realize the invention as claimed in Claim 1. Therefore, the §103 rejection of base Claim 1 should be withdrawn.

At least for the above reasons, the §103 rejection of base Claims 18, 20, 21, and 23 should also be withdrawn with respect to Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179. Because Claims 2, 4, 6-8, 19, 22, and 25-27 depend from and are limited by base Claims 1, 18, 21, and 23, the §103 rejection of these claims should be withdrawn with respect to Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179.

According to MPEP §2143.01, “the prior art must suggest the desirability of the claimed invention.” Neither Selman et al., Nunez et al., Farley ‘849, nor Farley ‘179, alone or in combination, suggest the desirability of the invention as claimed in Claim 1. None of the references are interested or suggest “mitigating the emergence of a center ridge,” as claimed in Claim 1, because Selman et al., Nunez et al., Farley ‘849, and Farley ‘179 include mattress regions having different firmness to provide different support to different portions of the human body. According to *In re Gorden*, the “mere fact that the prior art could be so modified would

not have made the modification obvious unless the prior art suggested the desirability of the modification” (See *In re Gorden*, 733 F.2d 900 at 902, 221 USPQ 1125 (Fed. Cir. 1984)).

Therefore, the §103 rejection of Claim 1 should be withdrawn with respect to Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179 for this additional reason.

At least for the above additional reason, the §103 rejection of base Claims 18, 20, 21, and 23 should also be withdrawn with respect to Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179. Because Claims 2, 4, 6-8, 19, 22, and 25-27 depend from and are limited by base Claims 1, 18, 21, and 23, the §103 rejection of these claims should be withdrawn for this additional reason with respect to Selman et al. or Nunez et al. in view of Farley ‘849 or Farley ‘179.

The Applicant also notes that the Examiner has not responded to assertion that “it would require impermissible hindsight reasoning for the Examiner to conclude that it would be obvious to rotate the orientation of the center region to traverse a mattress from the head end to the foot end because none of the references are concerned with center ridge formation” (See previous Office Action Response). The Examiner’s argument that a user can “lay transversely on a bed” is based on impermissible hindsight reasoning because the reasons for combining or modifying the cited references are derived from the current patent application. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.” (See *In re Dembiczak*, 175 F.3d 994 at 999).

Accordingly, for this further reason, there is no suggestion or motivation, either in Selman et al., Nunez et al., Farley ‘849, or Farley ‘179, or in the knowledge generally available to one of ordinary skill in the art, to modify the cited references to realize the invention, as

claimed in based Claim 1. Therefore, the Examiner has failed to make a prima facie case of obviousness for amended base Claim 1 for this further reason.

At least for the above further reason, the §103 rejection of base Claims 18, 20, 21, and 23 should also be withdrawn with respect to Selman et al. or Nunez et al. in view of Farley '849 or Farley '179. Because Claims 2, 4, 6-8, 19, 22, and 25-27 depend from and are limited by base Claims 1, 18, 21, and 23, the §103 rejection of these claims should be withdrawn for this further reason with respect to Selman et al. or Nunez et al. in view of Farley '849 or Farley '179.

The Examiner rejected Claims 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of Farley '849 or Farley '179 in further view of Klancik. The Applicant respectfully disagrees.

For the reasons described above, Selman et al. and Nunez et al., alone or in combination with Klancik fail to provide a prima facie case of obviousness with respect to the invention as claimed in Claim 1. Because Claims 9-11 depend from, and are limited by, Claim 1, the §103 rejection of Claims 9-11 should be withdrawn.

The Examiner rejected Claims 9 and 12-13 under 35 U.S.C. § 103(a) as being unpatentable over Selman et al. or Nunez et al. in view of Farley '849 or Farley '179 in further view of Talbert et al. or Bonaddio et al. or Fultz et al. The Applicant respectfully disagrees.

For the reasons described above, Selman et al. and Nunez et al., alone or in combination with Talbert et al., Bonaddio et al., or Fultz et al. fail to provide a prima facie case of obviousness with respect to the invention as claimed in Claim 1. Because Claims 9 and 12-13 depend from, and are limited by, Claim 1, the §103 rejection of Claims 9 and 12-13 should be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe that the appropriate fees are provided due in connection with this submission. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P01-104 from which the undersigned is authorized to draw.

Dated: March 7, 2006

Respectfully submitted,

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